

## REMARKS/ARGUMENTS

The election/restriction requirement dated April 14, 2006 has been considered. The Examiner asserts that restriction to one of Groups I-III is required under 35 U.S.C. §121.

**Group I** (Claims 2-4, 23, 27-29) is provisionally elected *with traverse*. The Examiner indicated that all independent claims, including Claims 1, 20, 31, 32, 34 and 37, will be examined with any selected invention group.

The Applicant respectfully traverses the requirement for failure of the restriction requirement to comply with the rules and requirements for restriction/election. As is described more fully below, the Applicant respectfully submits that the restriction requirement fails to meet the requisite showing as to why restriction would be required. The Applicants respectfully traverse, and request reconsideration and withdrawal of the restriction requirement. By way of this election *with traverse*, the Applicant reserves the right to petition any final decision by the Examiner.

In paragraph 2 of the Office Action, it is alleged that the three groups are related as subcombinations disclosed as usable together in a single combination. The Examiner relies on M.P.E.P § 806.05(d), which requires a showing of at least the following:

- A) the alleged subcombinations must be disclosed as usable together in a single combination;
- B) the alleged subcombinations must be shown to be separately usable;
- C) the alleged subcombinations must not overlap in scope; and
- D) the alleged subcombinations must not be obvious variants.

It is respectfully submitted that the required showing under M.P.E.P § 806.05(d) has not been established. The rationale for requiring restriction is provided in the Office Action as follows:

- “subcombination remote temperature control can be performed without energy binding information”
- “subcombination of data communication identifier can be used on secured personal or financial data transmission”
- “subcombination of energy management has separate utility such as local power on and off.

No showing was made in the Office Action establishing that the alleged subcombinations were disclosed as usable together in a single combination, nor whether the alleged subcombinations overlap in scope, nor whether the subcombinations are obvious variants. The requirements for requiring restriction under M.P.E.P § 806.05(d) have thus not been met.

The remaining requirement to establish the need for restriction is that the alleged subcombinations must be shown to be separately usable. The examiner must show this by way of example, thereby giving examples that one of the subcombinations has utility other than in the disclosed combination.

As for the first statement “subcombination remote temperature control can be performed without energy binding information,” The Examiner argues that the subcombination is “remote temperature control,” and that this subcombination can be performed without energy binding information. It is respectfully submitted that the differences identified by the Examiner are differences in claim language, but do not show that the alleged subcombination has utility other than in the disclosed combination. In other words, the example that to be provided is that the alleged subcombination has utility other than a disclosed combination.

For example, with respect to the “subcombination of energy management has separate utility such as local power on and off,” the Examiner must show by way of example that claims in this group can perform local power on and off. This appears to possibly relate to Group III, although it is unclear. If so, Claim 11 indicates responding to utility input signals indicating a high energy demand period by reducing energy consumption of the local system during the high energy demand period. It is unclear how this relates to local power on and off, and it is respectfully submitted that the examples provided must illustrate actual utility based on the language of the claim, but they do not. The rationale for the requirement of restriction is not clear, and does not afford the Applicant the opportunity to address the requirements set forth in the M.P.E.P. The Applicant respectfully submits that the required rationale for requiring restriction has not been established, nor is restriction proper in the present case.

In the aforementioned arguments, Applicant is contesting the propriety of the requirement for restriction. Because Applicant believes the proper showing required by

M.P.E.P. § 806.05(d) has not been made, by failing at least to identify the single disclosed combination to which the subcombinations are usable together and to show the separate usability of the subcombination (versus differing claim limitations) in such a combination, the Applicant does not reach the issue of whether such identified subcombinations are patentably distinct from one another.

### **CONCLUSION**

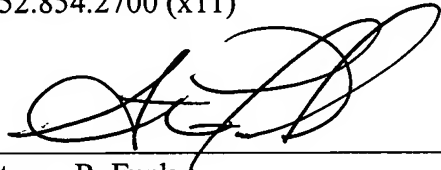
In view of the above, the Applicant respectfully requests reconsideration and withdrawal of the requirement for restriction. If the Examiner would find it helpful to discuss this issue by telephone, the undersigned attorney of record invites the Examiner to contact him at 952.854.2700, ext. 11.

Respectfully submitted,

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Date: 15 May 2006

By: \_\_\_\_\_

  
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